IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

Bhabhuta Ram Vs. State of Rajasthan
(D.B.CRIMINAL APPEAL NO.173/2002)

D.B. Criminal Appeal under Section 374(2) Cr.P.C. against the judgment dt.5.2.2002 passed by the Additional Sessions Judge(Fast Track), Jalore in Sessions Case No.86/2001 (Old No.25/01).

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Date of Judgment: July 21, 2006

P R E S E N T

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE R.P.VYAS

Mr.Mridul Jain, for the appellant
Mr.JPS Choudhary, Public Prosecutor

BY THE COURT: **(PER HON'BLE MR.MATHUR J.)**

1. The instant appeal is directed against the judgment dated 5.2.2002 passed by the Additional Sessions Judge(Fast Track), Jalore convicting the appellant Bhabhuta Ram of offence under Section 302 I.P.C. and sentencing him to imprisonment for life and

to pay a fine of Rs.3000/-; in default of payment to further undergo one month's rigorous imprisonment.

2. The accusation which laid foundation of the prosecution case revealed that P.W.12 Incharge, Police Station Ahore received a telephonic information from Constable Mahipal Singh on 9.5.2001 to the effect that in Village Harji a dead body of a Choudhary is lying. On this information police reached at the Labua Bera of Village Harji and identified the dead body as that of Roopa Ram. On the spot P.W.11 Dharma Ram submitted a written report Ex.P19 stating inter alia that as usual his deceased uncle Roopa Ram along with Lumbaram, Dhariya Meghwal and Asiya Meghwal was on the field during the night. In the morning his uncle Roopa Ram was found dead. On this information police registered a case for offence under Section 302 I.P.C. and proceeded with investigation. After usual investigation police laid charge-sheet against the appellant for offence under Section 302 I.P.C. During the trial the prosecution set the following piece of circumstances to fasten the guilt of the accused:-

(1) Extra judicial confession of the crime made by the appellant before P.W.9 Sava

Ram and P.W.11 Dharma Ram.

(2) The conduct of the appellant in attempting to commit suicide and then concealing himself in a well.

(3) Recovery of the bloodstained weapon of offence i.e. Kunt.

(4) Motive.

In order to prove the case the prosecution produced 12 witnesses and exhibited certain documents. The appellant in his statement under Section 313 of the Code of Criminal Procedure denied the correctness of the prosecution evidence appearing against him. He stated that he has been falsely implicated as he was demanding his share in the land from the co-sharers. He also pleaded the plea of alibi. He stated that at the time of incident he was in village Thanvla attending marriage in the house of Chatra. In support of the defence he examined D.W.1 Chatra. The trial court found each piece of circumstance proved against the appellant and convicted and sentenced in the manner stated above.

3. It is submitted by the learned counsel that the entire case rests on circumstantial evidence and the chain of circumstances if highlighted particularly the

evidence of extra judicial confession did not lead to inevitable conclusion that it was the accused alone, who was responsible for the crime and none else. The learned counsel has pointed out number of infirmities in the prosecution case. On the other hand the learned Public Prosecutor has support the judgment of the trial court.

4. It has been consistently laid down by this Court that where a case rests solely on the circumstantial evidence the inference of guilt is justified only when all facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. There are series of case which we need not to refer.

5. We shall take up each of the circumstances in seriatim. As far as the first circumstance is concerned, we may remind ourselves that it is not open for any court to start with the presumption that extra judicial confession is a weak type of evidence. The law as to extra judicial confession is well established. An extra judicial confession if voluntary and true and made in a fit state of mind can be relied upon by the court. Before

relying on the alleged allegation of confession the court is required to look into the surrounding circumstances among which the most important is the person to whom the confession is made, the time and place of making it. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appeared to be unbiased, not even remotely inimical to the accused and in respect of whom nothing is brought out which may tend to indicate that he may have a motive attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused the perpetrator of the crime and nothing is omitted by the witness which may militate against it. Thus, before the evidence of extra judicial confession is relied upon it is required to be put to the touch stone of creditability as indicated above. Reference be made to decisions of the Apex Court in Guru Singh vs. State of Rajasthan reported in AIR 2001 SC page 330 and State of Rajasthan vs. Raja Ram reported in 2003(8) SCC page 180.

6. In the instant case the prosecution has produced P.W.9 Sava Ram and P.W.11 Dharma Ram to establish

the evidence of extra judicial confession. P.W.9 Sava Ram stated that he visited the Village Harji with a view to meet appellant Bhabhuta Ram and Dharma Ram. At that time Bhabhuta Ram was standing in the corner of his field. Dharma Ram was also standing at a distance of about 100 Ft. Bhabhuta Ram gave some indication to come close to him. He did not go close to Bhabhuta Ram. Thus, he himself came close to him and Dharma Ram. Appellant Bhabhuta Ram folded the hands and confessed that he had killed his uncle Roopa Ram. He also stated that something wrong had happened to him, as such he committed the offence. After committing the crime he tried to commit suicide by jumping into the well. He remained in the well for 3 days. He also offered to present himself before the wife of Roopa Ram to tender apology. In the cross examination he admitted that the deceased Roopa Ram was his maternal uncle. His village was at a distance of 17-18 Kms away from Village Harji. He visited Village Harji on 17.5.2001 i.e. after 8 days of the incident. On the day when Roopa Ram was murdered, he was in Karnataka. Initially he had gone to the house of Roopa Ram for condolence till then he was not aware as to who had killed Roopa Ram. From Village Harji he returned

without meeting his maternal aunt i.e. the wife of deceased Roopa Ram. He also admitted that as the appellant Bhabhuta Ram had taken his share in land, Dharma Ram and Lumbaram were unhappy with him. He also admitted that he did not disclose this fact to the police irrespective of the fact that on that day the police was in Village Harji investigating the case. Testing the evidence of this witness on the touch stone of creditability and acceptability we are of the view that the witness is not creditworthy. He is the close relative of the deceased. There was absolutely no reason for the appellant to make a confession before him. After 8 days of the incident the witness straight way goes to the field of the appellant. There is no interaction between them. The appellant abruptly calls him to come nearby. However, on his own the appellant comes to him and makes a confession of killing Roopa Ram. There is neither appropriate time nor place to make such confession. It appears as if the appellant was waiting for this witness alone for complete 8 days and as soon as he saw him he blurted the truth. He went to Village Harji for condolence but he did not visit his maternal aunt whose husband has died. This witness on face appears to be a cooked up witness.

7. P.W.11 Dharma Ram is the nephew of deceased Roopa Ram. On the fateful day he was also on the field along with deceased Roopa Ram. He is the person, who lodged the First Information Report of the incident. He has stated that after 8 days of the incident Sava Ram of Village Gangava visited his house. Sava Ram also visited his filed. While they were talking Bhabhuta Ram called them. When they did not go to him. He himself came close to them. He made a confession to the effect that he had killed his uncle Roopa Ram. He also stated that something had gone wrong with his mind, which compelled him to commit the crime. He also stated that after committing the crime he jumped into the well for committing suicide. He also offered himself to surrender before the wife of Roopa Ram and tender apology. In the cross examination he admitted that about a year prior to the incident Bhabhuta Ram had taken share in the land and separated from other co-sharers. He also admitted that they had quarrelled with Bhabhuta Ram as to the distribution of water. Admittedly this witness is belonged to the other group and there was absolutely no occasion to make a confession before him. He could not have expected any help from him.

8. There appears to be substance in the contention raised by the learned counsel for the appellant that it was a blind murder and as when for 8 days the police did not get any clue they cooked up the evidence of extra judicial confession. On careful consideration, we are of the view that the evidence of extra judicial confession is not creditworthy and the same deserves to be rejected.

9. The second circumstance formulated by the prosecution is that after committing the crime appellant jumped into the well. In this regard prosecution has produced P.W.10 Ganpat Singh. He stated that on 9.5.2001 he was Incharge of the Police Station, Ahore. He also stated that he was informed by one Kana Ram that Bhabhuta Ram had jumped into the well. On the basis of that information he registered a case against Bhabhuta Ram for offence under Section 309 I.P.C. It may be stated that Kana Ram has not been produced. However, the learned trial court has found this circumstance proved on the basis of evidence of extra judicial confession of P.W.9 Sava Ram and P.W.11 Dharma Ram. We have discredited the testimony of both the witnesses, thus, we are of the view that the

prosecution has failed to prove the second circumstance against the appellant.

10. As regards the third circumstance it is stated that in pursuance of the information Ex.P15 a bloodstained Kunt was recovered vide Ex.P12. As per the FSL report Ex.P16 the Kunt has been found to be bloodstained. It is argued that the Kunt has been recovered from the open space. The contention has been rejected by the trial court on the ground that the Kunt was taken out by the appellant from the heap of garbage. We are in agreement with the view expressed by the trial court. The recovery cannot be said to be from an open space. Thus, the prosecution has succeeded in establishing the circumstance of recovery of the Kunt.

11. The last circumstance is of motive. It is stated by P.W.6 Smt. Mansa that the appellant was unhappy as Ravta Ram had taken Roopa Ram with him for attending marriage ceremony of Mahendra in a different village in preference to him. Few days back he expressed his displeasure on this account and threatened for dire consequences. We are of the view that such a trivial issue cannot be a reason for committing the murder of

Roopa Ram. Thus, we are of the view that except the circumstance of recovery of Kunt, the prosecution has not been able to establish any of the other circumstances. Taking into totality of the circumstances cast an indelible shadow of doubt on the prosecution case. The possibility of falsely implicating the appellant cannot be ruled out as there were so many other co-sharers in the land, they were inimical to the appellant as he had taken out the share. In these circumstances the appellant is entitled to benefit of doubt.

12. Consequently, we allow the appeal. The judgment of the trial court – Additional Sessions Judge(Fast Track), Jalore dated 5.2.2002 is set aside. The appellant is acquitted of all the charges levelled against him. He is in Jail. He shall be set at liberty forthwith, if not required in any other case.

(R.P. VYAS), J. **(N.N.MATHUR), J.**

BKS/-